

### **REMARKS/ARGUMENTS**

Claims 20, 22-27, 30 and 31 are pending in the present application. Claim 20 has been amended by limiting "the substances capable of reducing nitrite ions" to the substances as originally recited by claim 21 except for ascorbic acid. Claims 1-19, 21, and 28-29 have been cancelled. No new matter has been entered by the present amendment.

Applicants respectfully request that the Examiner enter the present amendment because Applicants truthfully believe that the present amendment are necessary and should not be presented earlier for the following good and sufficient reasons. See MPEP 706.07 (Form 7.39.01). Upon determining that the composition comprising a polymethine dye, sulfamic acid as a nitrite reducer (the elected species), and a buffer for maintaining an acidic pH is free of the prior art, the Examiner extended the examination to other species within the Markush Group of original claim 21. During the Examiner's expanded examination, the Examiner issued an obvious rejection of claim 20-24, and 26-27 in view of Mizukami (EP0082983A2) and Kohnert et al (U.S. Patent 5,366,730) under 35 U.S.C. 103(a). According to the Examiner, Mizukami discloses processes whereby a reagent comprising a polymethine dye at a pH ranging from 4.5 to 11, is used to differentially stain leukocytes. Kohnert mentions that ascorbic acid may be used as a pH buffer agent. Therefore, the Examiner deemed that it is obvious to combine the teachings of Kohnert and Mizukami to arrive at the present invention.

As discussed in Applicants' previous response dated October 27, 2004, Applicants believes that there is no motivation to combine the teachings of those references because they pertain to nonanalogous art and they are not directed to staining bacteria as is the present invention. Hence, Applicants did not file the present amendment at an earlier time.

In the present Office Action, the Examiner maintains the obviousness rejection of claims 20-24, and 26-27 over Kohnert and Mizukami and insists that these two references pertain to analogous art and the fact that they are not directed to staining bacteria is of no relevance. While Applicants still believe that the previously presented claim 20-24, and 26-27 are not obvious over the two cited references for the reasons as set forth in the previous response, Applicants now have amended the independent claim 20 in order to facilitate the prosecution of the present application. In the present claim 20, "the substances capable of reducing nitrite ions" has been limited to the substances as recited in the Markush group of original claim 21 except for ascorbic acid. Since ascorbic acid is not recited in the amended independent claim 20, claim 20 and all its dependent claims are not obvious over Kohnert and Mizukami. See MPEP 2143.03 (All Claim Limitations Must Be Taught or Suggested.)

Claims 30 and 31 have been allowed. Claim 25 was objected to as depending from a rejected claim (claim 20). Since claim 20 has been amended to overcome the rejection, the objection should also be obviated now.

Based on the foregoing reasons, Applicants believe that the present application is condition of allowance and respectfully request early and favorable consideration from the Examiner.

It is believed that no other fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,  
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